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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VIVIAN FIORI and ROGGIE TRUJILLO, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

DELL INC., a corporation; BANCTEC, INC.,
a corporation; QUALXSERV LLC, an entity;
DELL CATALOG SALES, L.P., an entity;
DELL PRODUCTS, L.P., an entity; DELL
MARKETING L.P., an entity; DELL
MARKETING L.P., LLC, an entity; DELL
MARKETING G.P., LLC, an entity; DELL
USA, L.P., an entity; and DOES 1 Through
10,

Defendants.

Case No. C09 01518 JW

FIRST AMENDED COMPLAINT FOR:

- 1. VIOLATION OF THE SONG-
BEVERLY CONSUMER
WARRANTY ACT,
CALIFORNIA CIVIL CODE §§
1790, et seq.**
- 2. VIOLATION OF THE
CONSUMERS LEGAL
REMEDIES ACT, CALIFORNIA
CIVIL CODE §§ 1750, et seq.**
- 3. VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS
CODE §§ 17500, et seq.**
- 4. VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS
CODE §§ 17200, et seq.**

DEMAND FOR JURY TRIAL

CLASS ACTION

Assigned to the Honorable James Ware

Action filed on April 7, 2009

1 Plaintiffs Vivian Fiori and Roggie Trujillo, on behalf of themselves and all other similarly
2 situated persons in the State of California, allege as follows:

3 **NATURE OF THE CASE**

4 1. This suit concerns Defendants' deceptive business practice of secretly charging
5 Dell customers for onsite repair service for the first year after they purchased their Dell
6 computers. Because the hidden charges are never disclosed – except in Defendants' internal
7 invoicing which is never shown to the customer -- customers are completely unaware they have
8 paid for an onsite service contract they never knew they were purchasing, let alone consent to
9 buying.

10 2. This case is brought as a California-only class action on behalf of California
11 consumers based upon service contracts that were sold here for services to be performed solely in
12 California by Defendants' employees located here. California is also where all the injuries in
13 issue took place.

14 3. Class action treatment is appropriate as this matter involves a scheme to
15 deliberately cheat large numbers of consumers out of individually small sums of money through
16 a uniform course of conduct involving standardized business practices, common material
17 omissions, and substantially identical pre-preprinted form documentation. Plaintiffs are
18 informed and believe and thereon allege that the individual sums in issue are typically in the
19 range of \$60-\$120, the exact amount being in the exclusive knowledge of the Defendants.

20 **JURISDICTION**

21 4. This Court has subject matter jurisdiction under the Class Action Fairness Act of
22 2005, 28 U.S.C. § 1332(d), because members of the proposed California statewide Class are
23 citizens of California, a different state from Defendants, which are incorporated and have
24 principal places of business in Texas, Delaware or Massachusetts. The aggregate amount in
25 controversy exceeds \$5,000,000. Furthermore, Defendants Dell Inc.; BancTec, Inc.; QualxServ
26 LLC; Dell Catalog Sales, L.P.; Dell Products, L.P.; Dell Marketing, L.P.; Dell Marketing L.P.,
27 LLC; Dell Marketing G.P., LLC; and Dell USA, L.P. (hereafter “**Defendants**”) have
28 purposefully availed themselves of the benefits and protections of this District and/or have had

1 sufficient contacts with this District such that maintenance of the action in this locale is
2 consistent with traditional notions of fair play and substantial justice.

3 **INTRA-DISTRICT ASSIGNMENT**

4 5. Pursuant to Civil Local Rule 3-2(c), this case should be assigned to the San Jose
5 Division of this Court, as San Benito County is the residency of the Plaintiffs and where a
6 substantial part of the events or omissions which give rise to Plaintiffs' claims occurred.

7 **PARTIES**

8 6. Plaintiff Vivian Fiori and Plaintiff Roggie Trujillo are residents of San Benito
9 County, California, and were residents of California at the time they purchased the goods and
10 services in issue through the time of filing this action.

11 7. Plaintiffs are informed and believe and thereon allege that defendant Dell Inc. is a
12 corporation organized under the laws of the State of Delaware, with its principal place of
13 business in Round Rock, Texas, and was formerly known as "Dell Computer Corporation." Dell
14 Inc. is engaged in the business of manufacturing, marketing, selling, retailing, maintaining,
15 repairing, servicing, and providing support for computer systems and computer products. Dell
16 Inc. is also engaged in the business of making, marketing, selling, and retailing service contracts
17 for the repair of Dell computers, including the ones involved in this case. In addition, Dell Inc. is
18 engaged in the business of repairing, servicing, and providing support for onsite warranty repair
19 services to purchasers of Dell computer systems, including the onsite warranty repair services at
20 issue in this case.

21 8. Plaintiffs are informed and believe and thereon allege that defendants Dell
22 Catalog Sales, L.P.; Dell Products, L.P.; Dell Marketing, L.P.; Dell Marketing L.P., LLC; Dell
23 Marketing G.P., LLC; and Dell USA, L.P. are wholly-owned subsidiaries and/or affiliates
24 through which Dell Inc. conducts its business. Dell Inc. and the foregoing Dell defendants have
25 been or are the principals, agents, employees, representatives, partners, joint venturers and/or
26 co-conspirators of each other and, in such capacity or capacities, participated in the acts or
27 conduct alleged herein and incurred liability therefor. Further, Plaintiffs are informed and
28 believe and thereon allege that Defendants Dell Catalog Sales, L.P.; Dell Products, L.P.; Dell

1 Marketing, L.P.; Dell Marketing L.P., LLC; Dell Marketing G.P., LLC; and Dell USA, L.P. are,
2 and at all times herein mentioned were, the alter egos of Defendant Dell Inc., and there exists,
3 and at all times herein mentioned has existed, a unity of interest and ownership between such
4 Dell defendants and Dell Inc. such that any separateness between them has ceased to exist, in that
5 Defendant Dell Inc. completely controls, dominates, manages, and operates Dell Catalog Sales,
6 L.P.; Dell Products, L.P.; Dell Marketing, L.P.; Dell Marketing L.P., LLC; Dell Marketing G.P.,
7 LLC; and Dell USA, L.P. to the detriment of Plaintiffs and class members. Adherence to the
8 fiction of the existence of Dell Catalog Sales, L.P.; Dell Products, L.P.; Dell Marketing, L.P.;
9 Dell Marketing L.P., LLC; Dell Marketing G.P., LLC; and Dell USA, L.P. as entities separate
10 and distinct from Dell Inc. would permit an abuse of corporate privileges and would sanction a
11 fraud and promote injustice.

12 9. Collectively, all of the Dell defendants will hereafter be referred to as “**Dell**” or
13 “**Dell Defendants.**” Thus, “**Dell**” or “**Dell Defendants**” includes Dell Inc.; Dell Catalog Sales,
14 L.P.; Dell Products, L.P.; Dell Marketing, L.P.; Dell Marketing L.P., LLC; Dell Marketing G.P.,
15 LLC; and Dell USA, L.P.

16 10. Plaintiffs are informed and believe and thereon allege that defendant Banctec, Inc.
17 (“**Banctec**”) is a corporation organized under the laws of the State of Delaware with its principal
18 place of business located in Irving, Texas. Banctec is engaged in the making, marketing, selling,
19 and retailing of service contracts for the repair of Dell computers. Banctec is also engaged in the
20 business of repairing, servicing, and providing support for onsite warranty repair services to
21 purchasers of Dell computer systems, including the onsite warranty repair services at issue in this
22 case. Further, Banctec, along with Dell and defendant Qualxserv LLC, sells service contracts to
23 California residents for the repair of Dell computers, including the ones involved in this case, and
24 Banctec provides onsite repair services to Dell customers in California through its employees
25 who are located here.

26 11. Plaintiffs are informed and believe and thereon allege that defendant QualxServ
27 LLC (“**Qualxserv**”) is a limited liability company organized under the laws of the State of
28 Delaware with its principal place of business located in Tewksbury, Massachusetts. Qualxserv is

1 engaged in the making, marketing, selling, and retailing of service contracts for the repair of Dell
2 computers. Qualxserv is also engaged in the business of repairing, servicing, and providing
3 support for onsite warranty repair services to purchasers of Dell computer systems, including the
4 onsite warranty repair services at issue in this case. Further, Qualxserv, along with Dell and
5 Banctec, sells service contracts to California residents for the repair of Dell computers, including
6 the ones involved in this case, and Qualxserv provides onsite repair services to Dell customers in
7 California through its employees who are located here.

8 12. Plaintiffs are informed and believe and thereon allege that with respect to the
9 claims asserted herein, each of the Defendants has been or is the principal, agent, employee,
10 representative, partner, joint venturer and/or co-conspirator of each of the other Defendants and
11 in such capacity or capacities participated in the acts or conduct alleged herein and incurred
12 liability therefor. Further, at all times relevant hereto, each of the Defendants has been or is the
13 agent, partner and/or joint venturer of each other Defendant with respect to the making,
14 marketing, selling, maintaining, repairing, servicing, and providing warranty services, parts and
15 labor to purchasers of Dell computer systems, including the onsite warranty repair services at
16 issue. Each Defendant derived, accepted and retained monetary profits and benefits from the sale
17 of the service contracts in issue. Further, each of the Defendants acted for and on behalf of each
18 other Defendant with respect to the service contracts, with actual and apparent authority to act,
19 and did so within the course and scope of their agency, partnership, joint venture and/or
20 authority. With regard to the specific warranties, representations and agreements alleged herein,
21 each was made with the knowledge, consent, authorization, ratification and approval of each of
22 the Defendants.

23 13. More specifically, Banctec and Qualxserv participated in and profited from all of
24 the business practices and policies alleged herein with full knowledge of the facts, and were fully
25 aware of the material omissions and business practices and policies in issue which were
26 committed on their behalf as well as on behalf of Dell.

27 14. The true names and capacities, whether individual, corporate, associate or
28 otherwise, of Defendant Does 1-10, inclusive, are unknown to Plaintiffs, who therefore sue such

1 Defendants by such fictitious names. Plaintiffs will amend this Complaint to show such
2 Defendants' true names or capacities when the same have been ascertained. Plaintiffs are
3 informed and believe and thereon allege that each of said fictitious named Defendants is
4 responsible in some manner for the occurrences herein alleged.

5 **California Regulation**

6 15. The service contracts that are the subject of this dispute were all sold in California
7 to California residents for use in California on Dell computers located here. As such, the service
8 contracts in issue, as well as any onsite repair services performed thereunder, are statutorily
9 regulated by the State of California through the Business and Professions Code §§ 9800, *et seq.*,
10 the Song-Beverly Act (Civil Code §§ 1790, *et seq.*), and Title 16 of the California Code of
11 Regulations, Division 27. Further, Defendants, as sellers of the service contracts as well as being
12 providers of repair services, are regulated in California by the Bureau of Electronic and
13 Appliance Repair as "service dealers" pursuant to § 9801(f) of the California Business and
14 Professions Code, as "service contract sellers" or "sellers" pursuant to subsection c of § 9855 of
15 that Code, as well as "service contractors" pursuant to § 9855(e). Plaintiffs are informed and
16 believe and thereon allege that as sellers of service contracts and providers of repair services in
17 California, Defendants are required to be registered with the State of California, and that
18 Defendants are either presently registered or have been in the past.

19 **GENERAL ALLEGATIONS**

20 **Defendants' Common Practice**

21 16. Dell sells desktop and laptop computers directly to consumers through its website
22 as well as over the telephone through its sales representatives. Dell computers are broadly
23 advertised in California to California consumers through various media, including Dell's
24 website, mail order catalogs, newspapers, television and the Internet.

25 17. Dell, on behalf of itself and all Defendants, advertises and represents that warranty
26 repairs for Dell computers are made onsite for the first year after purchase. As a matter of
27 business policy and practice common to all their customers, including Plaintiffs and class
28 members, Defendants secretly charge Dell customers for this first year onsite repair service

1 without the customer's knowledge or informed consent. This charge is hidden from the customer
2 and never disclosed by Defendants either prior to, at the time of, or after the sale of a Dell
3 computer.

4 18. Further, Defendants' standard policy is that the service contracts for the first year
5 after purchase are optional and do not have to be bought by the customer. However, in
6 furtherance of their scheme to deceive, Defendants never disclose this standard policy or option
7 to the customer prior to, at the time of, or after the sale of a Dell computer. As a result, the
8 customers are completely unaware they are being charged for the first year onsite repair service,
9 or even that they had the option not to be charged in the first place.

10 19. Also in furtherance of the scheme, Defendants memorialize every computer sale
11 in writing by way of a standard Invoice or Acknowledgment (see example attached as Exhibits 1-
12 2). These Invoices are sent to Dell customers after they purchase a computer as a matter of
13 Defendants' standard business practice. The Invoices do not list a charge for the first year
14 service contract, nor do they disclose that the customer has been charged for a first year onsite
15 service contract. In contrast, as a matter of Defendants' standard business practice, the charge for
16 the service contract is clearly and conspicuously listed in Defendants' internal invoicing that is
17 never shown to the customer.

18 20. Similarly, Defendants, as a matter of standard business practice, make available to
19 Dell customers a copy of their standard service contract that, again, fails to disclose that there
20 was any charge for the service contract or for the onsite repair service.

21 21. Plaintiffs are informed and believe and thereon allege that Defendants charge the
22 customer somewhere between \$60 to \$120 for this onsite service for the first year, the exact
23 amount being in the exclusive knowledge of Defendants.

24 22. Given the foregoing practices and policies, buyers of Dell computers, as
25 reasonable consumers, reasonably believe there is no charge for first year onsite warranty repair
26 service. As buyers and reasonable consumers, customers purchasing Dell computers, including
27 Plaintiffs and class members, would reasonably expect that if Defendants, as sellers, imposed a
28 charge for the first year onsite repair service, such a cost would be clearly and conspicuously

1 disclosed to buyers before or at the time of sale.

2 23. In addition, as buyers and reasonable consumers, customers purchasing Dell
3 computers, including Plaintiffs and class members, would reasonably expect that if they had the
4 option and choice whether or not to purchase onsite repair service for the first year, Defendants,
5 as sellers, would clearly and conspicuously disclose this option to them before or at the time of
6 sale. Taken together, customers purchasing Dell computers, including Plaintiffs and class
7 members, would reasonably expect that if a charge existed for the first year onsite repair service,
8 Defendants would clearly and conspicuously disclose to them the full details of the charge, as
9 well as disclose to them their option and choice whether to incur the extra charge or not.

10 **Uniform Omissions and Standard Documentation**

11 24. Defendants' policy and standard business practices as alleged herein are common
12 to all Dell customers, including Plaintiffs and class members. Further, Defendants made the
13 same uniform omissions and lack of disclosures to all Dell customers, including Plaintiffs and
14 class members, and irrespective of whether the customers purchased their computers at Dell's
15 website or over the telephone from Dell's sales representatives. Defendants' uniform omissions
16 were material in inducing Plaintiffs and class members to incur, without their knowledge or
17 consent, charges for their first year onsite repair service through the unintentional purchase of a
18 service contract.

19 25. In addition, Defendants provided Dell customers, including Plaintiffs and class
20 members, with the same or substantially the same uniform standard documentation, including
21 substantially identical form invoices and pre-printed form service contracts. Defendants drafted
22 all sales documentation, and are in a superior bargaining position from their customers, including
23 Plaintiffs and class members. Customers, including Plaintiffs and class members, have no input
24 or ability to negotiate any of the terms of these "take it or leave it" form adhesion documents.
25 Further, Defendants unilaterally insert unfair terms in their form documents, such as class action
26 bans and Texas choice of law provisions, for the distinct purpose of trying to immunize
27 themselves from any material liability so that they will be free to engage in their wrongful
28 conduct to substantially increase profits without any real consequences.

1 **Defendants' Motives**

2 26. Plaintiffs are informed and believe and thereon allege that the reason Defendants
3 engage in the deceptive acts alleged herein is to allow them to substantially increase sales of Dell
4 computers and increase profits. Plaintiffs are informed and believe and thereon allege that, since
5 Dell has no retail outlets, Defendants believe that if they did not provide their customers with
6 onsite repair service for the first year after purchase, they would be at a substantial competitive
7 disadvantage to box-store retailers such as Best Buy which offers their customer the convenience
8 of returning a broken computer to any store for warranty service. Defendants attempt to
9 counteract this advantage by offering to come to a customer's home to fix their computer if it is
10 broken but, to maintain high profits, they force the customer to secretly pay for this service
11 option. Without the onsite repair service, Dell customers would be forced to package-up their
12 computer and mail it to a Dell repair facility for warranty repair.

13 27. Plaintiffs are also informed and believe and thereon allege that Defendants believe
14 that if they did not conceal the charge for this onsite service, Defendants fear that potential
15 customers would find it more attractive to purchase their computers at a store where warranty
16 repair options are both free and more convenient, rather than pay a premium price for
17 Defendants' promise to fix their Dell computers onsite at some time in the future. Plaintiffs are
18 also informed and believe and thereon allege that sales of service contracts are a high profit
19 margin business for Defendants which provides them further incentive for the scheme.

20 **Fiori Service Contract**

21 28. On or around September 5, 2003, Plaintiff Vivian Fiori purchased a Dell computer
22 for her personal, family and household use through Dell's website, and did use the computer for
23 her personal, family and household use. She selected the computer she wanted from among
24 various different choices presented on the Dell website. According to the written representations
25 and advertising Defendants made on the website, which Plaintiff Fiori read before making her
26 computer purchase, warranty repairs for her computer would be made onsite for the first year
27 after purchase.

28 ///

1 29. Plaintiff Fiori was provided no option to delete or eliminate the first year onsite
2 repair service. Further, Defendants made no disclosure on the website that there was any charge
3 or cost associated with the first year onsite repair service. Nor was there any disclosure on the
4 website giving Plaintiff the option of just purchasing the computer without the onsite repair
5 service for a lesser price.

6 30. Based on the foregoing, and as a reasonable consumer, Plaintiff reasonably
7 concluded there was no charge for the first year onsite repair service. Plaintiff reasonably
8 expected that if there was a charge for the first year onsite service, Defendants would clearly
9 disclose this cost prior to or at the time of the sale. Further, Plaintiff reasonably expected that if
10 there was a charge or cost associated with the onsite service for the first year of purchase,
11 Defendants would have provided an option prior to or at the time of the sale for Plaintiff to
12 purchase the computer without the onsite service.

13 31. Relying upon the foregoing lack of disclosures, and not knowing that there
14 actually was a charge for the onsite service, Plaintiff made her purchase of the computer through
15 Dell's website on or about September 5, 2003. She did this with a credit card payment that
16 Defendants immediately accepted.

17 32. Defendants, pursuant to their standard business practice, sent Plaintiff Fiori a
18 written Acknowledgment Invoice dated September 12, 2003 memorializing her purchase. (A
19 true and correct redacted copy of the front of this Invoice is attached hereto as Exhibit 1.) The
20 Invoice, pursuant to Defendants' standard business practice, did not list a price for the initial, or
21 first year, onsite repair service, and did not indicate anywhere that she had been charged the price
22 for a service contract. Further, and also pursuant to Defendants' established business practice,
23 nowhere on the Invoice did Defendants disclose to Plaintiff that there was a charge for her first
24 year onsite repair service or that Defendants had actually charged Plaintiff for the cost of a
25 service contract. Nor did Defendants disclose to Plaintiff anywhere on the Invoice that she had
26 the option to purchase the computer without incurring a charge for the onsite repair service and
27 service contract.

28 ///

1 33. Plaintiff is also informed and believes and thereon alleges that, pursuant to
2 Defendants' standard business practice, Defendants made available to her a pre-printed form
3 service contract for the onsite service. As with the Invoice, Plaintiff is informed and believes and
4 thereon alleges that nowhere on the form did Defendants disclose there was any charge for the
5 first year onsite service or that Plaintiff had the option not to have this onsite service for the first
6 year after purchase.

7 34. Within the year before filing this action, Plaintiff Fiori discovered, as a result of
8 an unrelated legal proceeding, that Defendants had secretly charged her for onsite warranty repair
9 service during the first year after purchase through the undisclosed sale of a service contract to
10 her. Defendants concealed and suppressed the true facts from Plaintiff and never disclosed them
11 to Plaintiff before or after her computer purchase took place. Plaintiff Fiori had no knowledge
12 that she was charged for onsite service through a service contract, and never agreed or consented
13 to this charge.

14 35. If Defendants had disclosed the charge for the first year onsite repair service and
15 service contract prior to or at the time of sale, Plaintiff Fiori would have been aware of it, would
16 have acted differently, and would not have purchased the onsite service through the purchase of a
17 service contract. Likewise, if Defendants had disclosed to her prior to or at the time of sale that
18 the onsite service costs extra money and that she had the option not to purchase it, Plaintiff Fiori
19 would have been aware of it, would have acted differently, and would have chosen the option not
20 to have the onsite service and service contract for the first year.

21 36. Plaintiff is informed and believes and thereon alleges that the cost of the first year
22 onsite repair service and service contract that she unwittingly purchased without her consent,
23 ranged from approximately \$60 to \$120. The exact cost of the first year onsite service is
24 presently unknown to Plaintiff, and remains within Defendants' exclusive knowledge.

25 **Trujillo Service Contract**

26 37. On or around March 23, 2004, Plaintiff Vivian Fiori purchased through Dell's
27 website another Dell computer, this time on behalf of her mother, Plaintiff Roggie Trujillo, for
28 her mother's personal, family and household use in California. Plaintiff Trujillo delegated to her

1 daughter, as her agent for purposes of buying the computer, full authority and discretion to buy
2 the same type or substantially similar computer as her daughter had purchased the prior year.
3 Plaintiff Trujillo wanted the computer for her personal, family and household use, and Plaintiff
4 Trujillo did use the computer for her personal, family and household use. Prior to and at the time
5 of the purchase of her mother's computer in March, 2004 ("**the Trujillo computer**"), neither
6 Plaintiff Fiori nor Plaintiff Trujillo were aware that Defendants secretly charge customers for a
7 first year service contract as part of the transaction. If they had known about the charge, they
8 would have chosen not to purchase the service contract.

9 38. On behalf of her mother, Plaintiff Fiori selected the same type of computer she
10 had previously purchased for herself from among the various choices presented on Dell's
11 website. According to the written representations and advertising Defendants made on the
12 website, which Plaintiff Fiori read before making the purchase of the Trujillo computer, warranty
13 repairs for the computer would be made onsite for the first year after purchase.

14 39. In purchasing the Trujillo computer, Plaintiff Fiori was provided no option to
15 delete or eliminate the first year onsite repair service. Further, Defendants made no disclosure on
16 the website that there was any charge or cost associated with the first year onsite repair service.
17 Nor was there any disclosure on the website giving Plaintiffs the option of just purchasing the
18 computer without the onsite repair service for a lesser price.

19 40. Based on the foregoing, and as a reasonable consumer, Plaintiff Fiori, on behalf of
20 herself and her mother, reasonably concluded there was no charge for the first year of onsite
21 repair service for the Trujillo computer. Plaintiffs reasonably expected that if there was a charge
22 for the first year onsite service, Defendants would clearly disclose this cost prior to or at the time
23 of the sale. Further, Plaintiffs reasonably expected that if there was a charge or cost associated
24 with the onsite service for the first year of purchase, Defendants would provide an option prior to
25 or at the time of the sale for Plaintiffs to purchase the computer without the onsite service.

26 41. Relying upon the foregoing lack of disclosures, and not knowing that there
27 actually was a charge for the onsite service, Plaintiff Fiori, on behalf of her mother, purchased the
28 Trujillo computer through Dell's website on or about March 23, 2004, and paid for it with

1 Plaintiff Fiori's credit card. Defendants accepted payment immediately. Plaintiff Fiori was
2 subsequently reimbursed by her mother for the cost of the Trujillo computer.

3 42. Defendants, pursuant to their standard business practice, sent a written
4 Acknowledgment Invoice dated April 9, 2004 memorializing the purchase of the Trujillo
5 computer. (A true and correct redacted copy of the front of the Invoice is attached hereto as
6 Exhibit 2.) The Invoice, pursuant to Defendants' standard business practice, did not list a price
7 for the initial, or first year, onsite repair service, and did not indicate anywhere that the customer
8 had been charged the price for a service contract. Further, and also pursuant to Defendants'
9 established business practice, nowhere on the Invoice did Defendants disclose that there was a
10 charge for her first year onsite repair service or that Defendants had actually charged for the cost
11 of a service contract. Nor did Defendants disclose anywhere on the Invoice that the customer had
12 the option to purchase the computer without incurring a charge for the onsite repair service and
13 service contract.

14 43. Plaintiffs are also informed and believe and thereon allege that, pursuant to
15 Defendants' standard business practice, Defendants made available a pre-printed form service
16 contract for the onsite service. As with the Invoice, Plaintiffs are informed and believe and
17 thereon allege that nowhere on the form did Defendants disclose there was any charge for the
18 first year onsite service or that the customer had the option not to have this onsite service and
19 save herself the cost of the service.

20 44. Within the year before filing this action, Plaintiff Trujillo, as did Plaintiff Fiori,
21 discovered, as a result of an unrelated legal proceeding, that Defendants had secretly charged for
22 the first year onsite warranty repair service for the Trujillo computer. Defendants concealed and
23 suppressed the true facts from Plaintiffs and never disclosed them to Plaintiffs before or after the
24 Trujillo computer purchase took place. Neither Plaintiff Trujillo nor Plaintiff Fiori had any
25 knowledge that they were being charged for onsite service for the Trujillo computer through a
26 service contract, and neither Plaintiff ever agreed or consented to this charge.

27 45. If Defendants had disclosed to Plaintiffs prior to or at the time of sale that there
28 was a charge for the first year onsite repair service and service contract, Plaintiffs would have

1 been aware of it, would have acted differently, and would not have purchased the onsite service.
2 Likewise, if Defendants had disclosed to Plaintiffs prior to or at the time of the sale of the
3 Trujillo computer that the onsite service costs extra money and that they had the option not to
4 purchase it, Plaintiffs would have been aware of it, would have acted differently, and would have
5 chosen the option not to have the onsite service and service contract for the first year.

6 46. Plaintiffs are informed and believe and thereon allege that the cost of the first year
7 onsite repair service that they unknowingly purchased for the Trujillo computer without their
8 knowledge or informed consent, ranged from approximately \$60 to \$120. The exact cost of the
9 first year onsite service is presently unknown to Plaintiffs, and remains within Defendants'
10 exclusive knowledge.

11 CLASS ACTION ALLEGATIONS

12 47. Plaintiffs bring this action on behalf of themselves and all others similarly situated
13 as representatives of the following class:

14 All individuals in the State of California who purchased a Dell desktop
15 or notebook computer system and who also received the right to have
16 onsite warranty repair service during the first year after purchase.
Excluded from the class are employees of Defendants, their officers,
directors, subsidiaries and affiliates (the "Class").

17 48. This action has been brought and may properly be maintained as a class action,
18 satisfying the numerosity, commonality, typicality, adequacy, and superiority requirements of
19 Rule 23 of the Federal Rules of Civil Procedure.

20 49. Members of the Class are so numerous that joinder of all members is
21 impracticable. Plaintiffs do not know the exact size of the Class since such information is in the
22 exclusive control of Defendants. The exact numbers, however, may be determined by
23 appropriate discovery. Plaintiffs believe that the Class members number at least in the
24 thousands.

25 50. There are questions of fact and law common to the Class which common
26 questions predominate over any questions affecting only individual members. Those common
27 questions include whether Defendants engaged in the following conduct and whether such
28 conduct is improper and wrongful:

- 1 A. Charging Plaintiffs and plaintiff Class members for onsite warranty repair
- 2 service through the undisclosed sale of a service contract without their
- 3 knowledge or consent.
- 4 B. Failing to clearly and conspicuously disclose to Plaintiffs and plaintiff
- 5 Class members prior to, at the time of, and after the purchase of their Dell
- 6 computers that they were being charged for the cost of their first year
- 7 onsite warranty repair service through the undisclosed sale of a service
- 8 contract.
- 9 C. Failing to clearly and conspicuously disclose to Plaintiffs and plaintiff
- 10 Class members prior to, at the time of, and after the purchase of their Dell
- 11 computers that they had the option not to incur the cost of their first year
- 12 onsite warranty repair service and service contract.
- 13 D. Carrying out a scheme designed to deliberately cheat large numbers of
- 14 persons out of individually small sums of money.

15 51. The claims of the Representative Plaintiffs are typical of the claims of the Class as

16 all members of the Class are similarly affected by Defendants' wrongful conduct.

17 52. The Representative Plaintiffs will fairly and adequately represent and protect the

18 interests of the Class. They have no interests that conflict with or are antagonistic to the interests

19 of the Class. The Representative Plaintiffs have retained experienced and competent attorneys

20 who are experienced in class action litigation and who will fairly and adequately protect the

21 interests of the Class.

22 53. All Class members have the same legal rights to, and interest in, the subject matter

23 of this action, which are substantially similar, if not identical, for Plaintiffs and plaintiff Class

24 members.

25 54. The class action is an appropriate method for fair and efficient adjudication of the

26 controversy given the following:

- 27 A. Common questions of law and/or fact predominate over any individual
- 28 questions that may arise, such that there would be enormous economies to

the courts and the parties in litigating the common issues on a classwide, instead of a repetitive individual, basis;

B. Class members' individual damage claims are too small to make individual litigation an economically viable alternative;

C. Despite the relatively small size of individual Class members' claims, their aggregate volume, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this case to be litigated as a class action on a cost-effective basis, especially when compared with repetitive individual litigation; and

D. No unusual difficulties are likely to be encountered in the management of this class action in that all or substantially all questions of law and fact to be litigated are common to the Class.

55. Class certification is fair and efficient as well because prosecution of separate actions would create a risk of adjudications with respect to individual members of the Class, which as a practical matter, may be dispositive of the interests of others members not parties to the adjudication or substantially impair or impede their ability to protect their interests. In addition, Defendants have acted or refused to act on grounds generally applicable to all members of the Class, thereby making final injunctive relief concerning the Class as a whole appropriate.

FIRST CAUSE OF ACTION

FOR VIOLATION OF THE SONG-BEVERLY CONSUMER

WARRANTY ACT, CALIFORNIA CIVIL CODE §§ 1790, *et seq.*

(Plaintiffs, on Behalf of Themselves and All Class Members, Against All Defendants)

56. Plaintiffs reallege and incorporate by reference paragraphs 1-55 above into this claim for relief with the same force and effect as though these paragraphs were set forth at length herein.

57. Every service contract sold to a consumer in California for services to be rendered in this State is controlled and governed by the Song-Beverly Consumer Warranty Act, California Civil Code §§ 1790, *et seq.*, including § 1794.41(a). Any waiver of a buyer of a

1 service contract of consumer goods falling under this Act is contrary to public policy and is
2 unenforceable and void under Civil Code § 1790.1.

3 58. Plaintiffs and plaintiff Class members are “buyers,” and the computers in issue are
4 “consumer goods” and “home electronic products” as these terms are defined under California
5 Civil Code § 1791. At all times herein alleged, Dell is a “manufacturer” and each Defendant is a
6 “retail seller,” “seller” and/or “retailer” as those terms are defined in California Civil Code §
7 1791. The onsite service repair contracts at issue are “service contracts” as defined in California
8 Civil Code § 1791, as well as a “service contract covering a home electronic product” as those
9 terms are used in California Civil Code § 1794.41. Further, pursuant to § 9855 of the California
10 Business and Professions Code, each of the Defendants is a “service contract seller or seller” and
11 “service contractor” as those terms are defined in subsections c and e, and the onsite service
12 repair contracts at issue are “service contracts” as defined in § 9855(a). As a result, the
13 provisions of §§ 1794.4 and 1794.41 of the Song-Beverly Consumer Warranty Act also apply to
14 Defendants pursuant to Business and Professions Code § 9855.5.

15 59. In doing the acts alleged above, Defendants have carried out a scheme designed to
16 deliberately cheat large numbers of consumers out of individually small sums of money. In
17 furtherance of this scheme, Defendants breached § 1794.41(a)(1) of the Song-Beverly Consumer
18 Warranty Act by, among other things, failing to comply with the requirements and disclosures of
19 subsection (a) of section 1794.4 in failing to fully and conspicuously disclose the charges for the
20 onsite repair service and service contract in issue, and that this onsite service and service contract
21 were optional. In addition, Defendants violated § 1794.4(c)(5)(I) by failing to accurately and
22 completely disclose all “fees, charges, and other costs that the buyer must pay to obtain service.”

23 60. Plaintiffs and Class members have been damaged by Defendants’ failure to
24 comply with their obligations under the Song-Beverly Consumer Warranty Act with respect to
25 their service contracts.

26 61. As a proximate result of Defendants’ actions, Plaintiffs and members of the
27 plaintiff Class have suffered substantial monetary and non-monetary damage and are entitled to
28 injunctive relief to stop the offensive practices in issue as well as damages for all monies

1 unknowingly paid for the onsite repair service plus all applicable civil penalties and attorneys'
 2 fees and costs pursuant to Civil Code § 1794.

3 **SECOND CAUSE OF ACTION**

4 **FOR VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT,**

5 **CALIFORNIA CIVIL CODE §§ 1750, *et seq.***

6 **(Plaintiffs, on Behalf of Themselves and All Class Members, Against All Defendants**

7 62. Plaintiffs reallege and incorporate by reference paragraphs 1-55 above into this
 8 claim for relief with the same force and effect as though these paragraphs were set forth at length
 9 herein.

10 63. This cause of action is brought on behalf of Plaintiffs and Class members pursuant
 11 to the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (the "CLRA").
 12 The CLRA applies to Defendants' actions and conduct described herein. Any waiver by
 13 Plaintiffs and Class members of the provisions of the CLRA is contrary to public policy and is
 14 unenforceable and void under Civil Code § 1751.

15 64. Plaintiffs and Class members bought Dell computers primarily for personal,
 16 family, or household use and are thus "consumers" within the meaning of California Civil Code
 17 § 1761(d). The computers that Plaintiff and each member of the plaintiff Class bought are
 18 "goods" within the meaning of California Civil Code § 1761(a), and the onsite repair service and
 19 service contract in issue is a "service" within the meaning of California Civil Code § 1761(b).
 20 This matter, involving the purchase of Dell computers and the unknowing purchase of service
 21 contracts, constitutes a "transaction" within the meaning of California Civil Code § 1761(e).

22 65. In doing the acts alleged herein, Defendants have carried out a scheme designed to
 23 deliberately cheat large numbers of consumers out of individually small sums of money. In
 24 furtherance of this scheme, Defendants engaged in a number of proscribed practices under §
 25 1770 of the CLRA, namely § 1770(a)(5), (9), (14) and (15). These provisions proscribe as
 26 follows:

- 27 (a) The following unfair methods of competition and unfair or deceptive acts
 28 or practices undertaken by any person in a transaction intended to result or
 which results in the sale or lease of goods or services to any consumer are

unlawful:

- (5) Representing that goods or services have ... characteristics, ... [or] benefits ... which they do not have ...
- (9) Advertising goods or services with intent not to sell them as advertised. ...
- (14) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law. ...
- (15) Representing that a part, replacement, or repair service is needed when it is not.

66. Defendants' material omissions in failing to disclose their charges to Plaintiffs and Class members for their first year onsite service and service contract, and their failure to disclose the customers' option not to have the onsite service and service contract in the first place as more fully alleged above, is a violation of the CLRA and breach of the proscribed practices described above. Further, these acts were likely to mislead the members of the public and reasonable consumers, including Plaintiffs and plaintiff Class members, and did mislead members of the public and reasonable consumers, including Plaintiffs and plaintiff Class members.

67. Plaintiffs and Class members request that this Court enjoin Defendants from continuing to employ the unlawful methods, acts and practices alleged above, pursuant to California Civil Code § 1780(a)(2). Unless Defendants are permanently enjoined from continuing to engage in such violations of the CLRA, current and future consumers of Defendants' products will be affected in the same way as have Plaintiffs and members of the Class.

68. Further, as a direct and proximate result of the above-described deceptive practices, Plaintiffs and Class members have sustained damages in an amount to be proven at trial.

69. Defendants' deceptive practices were also directed to Class members who are senior citizens and disabled persons, as defined in California Civil Code § 1761(f) and (g), who are substantially more vulnerable to Defendants' conduct than other members of the public and

1 who actually suffered economic damage resulting from Defendants' conduct, and are therefore
2 entitled to additional statutory damages pursuant to California Civil Code § 1780(b).

3 70. As a further result of Defendants' conduct alleged above, and because Defendants
4 are guilty of fraud, malice, and/or oppression, Plaintiffs and Class members are entitled not only
5 to damages as set forth above, but also to exemplary and punitive damages in a sum not presently
6 known, but sufficient for the sake of example and by way of deterring Defendants and others
7 from further such actions.

8 71. On April 7, 2009, Plaintiffs provided Defendants with written notice of their
9 claims and the Class's claims, via U.S. certified mail, return receipt requested, and demanded
10 that, within 30 days, Defendants correct, repair, replace or otherwise rectify the deceptive
11 practices complained of herein for the entire Class pursuant to California Civil Code § 1770.
12 Defendants failed to do so or agree to do so. Therefore, Plaintiffs now seek damages for such
13 deceptive practices pursuant to California Civil Code Section 1782.

14 **THIRD CAUSE OF ACTION**

15 **FOR FALSE AND MISLEADING ADVERTISING IN VIOLATION OF** 16 **CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17500, *et seq.***

17 **(Plaintiffs, on Behalf of Themselves and All Class Members, Against All Defendants**

18 72. Plaintiffs reallege and incorporate by reference paragraphs 1-55 above into this
19 claim for relief with the same force and effect as though these paragraphs were set forth at length
20 herein.

21 73. Dell computers are broadly advertised to California consumers through various
22 media, including through Dell's website, mail order catalogs, newspapers, television and the
23 Internet. Defendants, with full knowledge that there is a charge for first year onsite service repair
24 and that this service is optional, intentionally and deceptively misled consumers, including
25 Plaintiffs and Class members, into believing that there was no charge for first year onsite service
26 through their advertising and statements, including their invoices and service contracts. The
27 advertising and statements fail to disclose all material and relevant information, namely, that
28 there was a charge for the onsite service for the first year of ownership, and that this onsite

1 service, which is sold through a service contract, was optional and customers had the choice not
2 to buy it.

3 74. Defendants' advertisements and statements were likely to deceive or mislead or
4 had the capacity, likelihood or tendency to deceive or confuse the consuming public, including
5 Plaintiffs and Class members. As a result, Defendants' acts and conduct in making and
6 disseminating the advertising and statements before the public in California were false and
7 misleading within the meaning, and in violation, of California Business & Professions Code §
8 17500.

9 75. Further, to the extent it is found that Defendants conditioned the sale of their
10 computers with the sale of a service contract, Defendants are in breach of California Business &
11 Professions Code § 17509(a) for failing to clearly and conspicuously disclose and list the price
12 for the onsite service contract separate and apart from the price of the computer in their
13 advertising and statements when soliciting purchasers for Dell computers.

14 76. In doing the acts alleged above, Defendants have carried out a scheme designed to
15 deliberately cheat large numbers of consumers out of individually small sums of money. As a
16 proximate result of Defendants' actions, Plaintiffs and members of the Class are entitled to
17 injunctive relief, restitution of all moneys wrongfully obtained from Plaintiffs and members of
18 the Class, and disgorgement.

19 **FOURTH CAUSE OF ACTION**

20 **FOR UNFAIR, DECEPTIVE, AND UNLAWFUL BUSINESS**

21 **PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**

22 **§§ 17200, *et seq.***

23 **(Plaintiffs, on Behalf of Themselves and All Class Members, Against All Defendants)**

24 77. Plaintiffs reallege and incorporate by reference all of the paragraphs above into
25 this claim for relief with the same force and effect as though these paragraphs were set forth at
26 length herein.

27 78. Defendants' actions alleged above, such as their failing to disclose the onsite
28 service contract charge or that the onsite service was optional for the first year, constitute

1 unlawful and unfair and fraudulent business practices and acts under California Business and
 2 Professions Code §§ 17200, *et seq.* These actions and business practices are forbidden by law,
 3 create harm that outweighs any benefit to customers, and are likely to deceive members of the
 4 public.

5 79. In doing the acts alleged above, Defendants have carried out a scheme designed to
 6 deliberately cheat large numbers of consumers out of individually small sums of money.
 7 Plaintiffs have suffered injury in fact and have lost money in at least the amount they
 8 unknowingly paid for the first year service contract, as a result of Defendants' unfair competition
 9 and deceptive advertising as defined in Business and Professions Code §§ 17200, *et seq.*

10 80. In addition, the acts and practices of Defendants are unlawful because they violate
 11 one or more of the following statutes and regulations:

12 a) California Business and Professions Code §§ 17500, *et seq.*, and § 9855.5.
 13 as set forth above.

14 b) Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.*, as set
 15 forth above.

16 c) Song-Beverly Consumer Warranty Act, Cal. Civil Code §§ 1790, *et seq.*,
 17 as set forth above.

18 d) 16 C.C.R. § 2720 of the California Administrative Code, which provides
 19 that "[n]o service dealer shall, in filling out an estimate or an invoice, withhold therefrom or
 20 insert therein any statement or information where the tendency or effect thereby is to mislead or
 21 deceive customers, prospective customers, or the consuming public."

22 81. Defendants' acts and practices as described herein have deceived and/or are likely
 23 to deceive members of the consuming public and reasonable consumers, including Plaintiffs and
 24 Class members.

25 82. Unless Defendants are enjoined from continuing to engage in the unlawful, unfair,
 26 fraudulent, untrue and deceptive acts and practices described herein, Plaintiffs and members of
 27 the Class will continue to be damaged by Defendants' unfair business practices.

28 ///

1 83. Defendants, through their acts of unfair competition and unfair, deceptive, untrue
2 and misleading advertising, have acquired money from Plaintiffs and Class members. Thus,
3 Plaintiffs and plaintiff Class members request that this Court restore this money to them, enjoin
4 Defendants from continuing to violate California Business & Professions Code §§ 17200, *et seq.*,
5 and order disgorgement.

6 **WHEREFORE**, Plaintiffs request the following relief, on behalf of themselves and on
7 behalf of the Class:

8 1. An order confirming that this action is properly maintainable as a class action and
9 appointing Plaintiffs and their counsel to represent the Class;

10 2. An award of damages, restitution, punitive damages, civil penalties, and all other
11 monetary relief authorized by law or referenced herein;

12 3. An order enjoining Defendants from charging customers for first year onsite repair
13 warranty services without conspicuously disclosing this cost to customers and their option not to
14 purchase the onsite service in the first place, and from engaging in unfair competition and
15 deceptive advertising and acts and practices as set forth in or related to the allegations herein;

16 4. An award of prejudgment interest and post-judgment interest;

17 5. An award providing for payment of costs of suit, including payment of experts'
18 fees and expenses;

19 6. An award of reasonable attorneys' fees; and

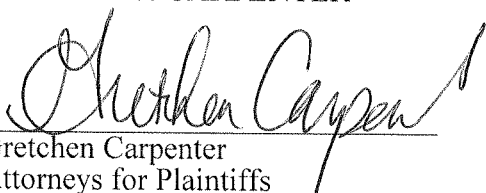
20 7. Such other and further relief as this Court may deem proper and just.

21 DATED: May 19, 2009

Respectfully submitted,

STRANGE & CARPENTER

22
23
24 By:


Gretchen Carpenter
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: May 19, 2009

Respectfully submitted,

STRANGE & CARPENTER

By:


Gretchen Carpenter
Attorneys for Plaintiffs

EXHIBIT 1

This is your **ACKNOWLEDGMENT**

Page: 1 of 2

FID Number: 74-2616805

Sales Rep: MICHAEL HODGKISS

For Sales: (800)695-8133

Sales Fax: (877)204-8109

For Customer Service: (800)695-8133

For Technical Support: (800)695-8133

Dell Online: <http://www.dell.com>

Customer Number: 034441005

Purchase Order: NAONLINECUST

Order Number: 461602352

Order Date: 09/05/03

23 01 V 01 01 N

Invoice Number: 461602352

Invoice Date: 09/12/03

Payment Terms: VISA

Shipped Via: LTL 5 DAY OR LESS

Waybill Number: ZZ3070050933574

SOLD TO:
#BWNHKKPV
#0344 4100 55# 00009035 1 MB 0.309 01
VIVIAN FIORI
FIORI VIVIAN

SHIP TO:
VIVIAN FIORI
FIORI VIVIAN



PLEASE REVIEW IMPORTANT TERMS & CONDITIONS ON THE REVERSE SIDE OF THIS INVOICE

Order	Shipped	Item Number	Description	Unit	Unit Price	Amount
1	1	221-2530	Dimension 4600 Series, Intel Pentium 4 Processor at 2.60GHz with HT Technology	EA	1,494.00	1,494.00
1	1	311-9002	512MB DDR SDRAM at 400MHz	EA	0.00	0.00
1	1	310-1696	Dell Enhanced Multimedia PS/2 Keyboard	EA	0.00	0.00
1	1	320-0578	17 in (17 in viewable) E171FPB Flat Panel Display	EA	0.00	0.00
1	1	320-0735	128MB DDR NVidia GeForce FX 5200 graphics card	EA	0.00	0.00
1	1	340-3274	80GB 7200 RPM Ultra ATA Hard Drive	EA	0.00	0.00
1	1	340-8446	USB Memory Key, 64MB, Dimension	EA	0.00	0.00
1	1	340-8688	No Floppy Drive Requested	EA	0.00	0.00
1	1	313-7222	Dell Application Back-up CD, Factory Install	EA	0.00	0.00
1	1	420-1921	Microsoft Windows XP Home Edition, Service Pack 1, English	EA	0.00	0.00
1	1	412-0409	Generic Dimension Dell Support	EA	0.00	0.00
1	1	310-4037	Dell USB Optical Mouse	EA	0.00	0.00
1	1	430-0472	10/100/1000 Networking Card	EA	0.00	0.00
1	1	313-1313	56K PCI Data Fax Modem for Windows	EA	0.00	0.00
1	1	313-1476	48X Max Variable CD-ROM Drive, Factory Install	EA	0.00	0.00
1	1	313-2758	Integrated Audio	EA	0.00	0.00
1	1	313-2198	No Speaker Requested	EA	0.00	0.00
1	1	410-0144	Symantec Norton Antivirus 2003 CD With Documentation, Retail Version	EA	0.00	0.00
1	1	365-1234	Readyware Installation Fee	EA	0.00	0.00
1	1	412-0298	MusicMatch 7.1x Basic	EA	0.00	0.00
1	1	412-0271	Dell Picture Studio Image Expert Standard, Dimension	EA	0.00	0.00
1	1	412-0273	Dell Picture Studio Paint Shop Pro Try and Buy, Dimension	EA	0.00	0.00
1	1	420-3224	Broadband Icon for Inspiron	EA	0.00	0.00
1	1	412-0445	AOL 8.0 PUB	EA	0.00	0.00
1	1	412-0380	Real Network RealOne Player Basic, Version 6, US English	EA	0.00	0.00
1	1	412-0402	Word Perfect Office 11	EA	0.00	0.00
1	1	950-1260	*Type 3- Third Party At Home Service, 24x7 Technical Support, Initial Year	EA	0.00	0.00
1	1	950-3337	*1 Year Limited Warranty	EA	0.00	0.00
1	1	950-9797	*No Warranty, Year 2 and 3	EA	0.00	0.00
1	1	412-0360	Soft Contracts - BancTec	EA	0.00	0.00
1	1	970-1017	*NO WARRANTY COMPLETE CARE	EA	0.00	0.00
1	1	462-1662	48x/24x/48x CD-RW Drive	EA	0.00	0.00

Service contract may be subject to sales tax.
any on-site or other service covers Dell system hardware only.
PLEASE KEEP ORIGINAL BOX FOR ALL RETURNS. COMPREHENSIVE ONLINE CUSTOMER CARE
INFORMATION AND ASSISTANCE IS A CLICK AWAY AT WWW.DELL.COM/PUBLIC-ECARE TO
ANSWER A VARIETY OF QUESTIONS REGARDING YOUR DELL ORDER.

Ship. &/or Handling	\$	0.00
Subtotal	\$	1,494.00
Taxable:	Tax:	
\$ 1,494.00	\$	123.28
Invoice Total	\$	1,617.28
VISA	\$	1,617.28
	\$	
Balance Due	\$	0.00



This is your ACKNOWLEDGMENT

Page: 2 of 2

FID Number: 74-2616805
 Sales Rep: MICHAEL HODGKISS
 For Sales: (800)695-8133
 Sales Fax: (877)204-8109
 For Customer Service: (800)695-8133
 For Technical Support: (800)695-8133
 Dell Online: <http://www.dell.com>

Customer Number: 034441005
 Purchase Order: NAONLINECUST
 Order Number: 461602352
 Order Date: 09/05/03

Invoice Number: 461602352

Invoice Date: 09/12/03
 Payment Terms: VISA
 Shipped Via: LTL 5 DAY OR LESS
 Waybill Number: ZZ3070050933574

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SOLD TO:

SHIP TO:
 VIVIAN FIORI
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041125601090350002

PLEASE REVIEW IMPORTANT TERMS & CONDITIONS ON THE REVERSE SIDE OF THIS INVOICE

Order	Shipped	Item Number	Description	Unit	Unit Price	Amount
1	1	460-9055	DHS Instant \$100 Off Discount(s) and/or coupo	EA	0.00	0.00
		System Service Tags	B3YNG31			

THIS IS NOT
 AN INVOICE

EXHIBIT 2

This is your **ACKNOWLEDGEMENT**

Page 1 of 2

FID Number: 74-2616805
 Sales Rep: JORGE CALDERON
 For Sales: (800) 695-8133
 Sales Fax: (877) 204-8109
 Customer Service: (800) 695-8133
 Technical Support: (800) 695-8133
 Dell Online: <http://www.dell.com>

Customer Number: 41742381
 Purchase Order:
 Order Number: 694349854
 Order Date: 03/23/04

Invoice Number: **694349854**

Invoice Date: 04/09/04
 Payment Terms: VISA
 Shipped Via: LTL 5 DAY OR LESS
 Waybill Number: 6AT9894214207974

23 01 V 01 01 N

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 VIVIAN FIORI
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 VIVIAN FIORI
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PLEASE READ IMPORTANT TERMS & CONDITIONS ON THE BACK OF THIS INVOICE

Order	Shipped	Item Number	Description	Unit	Unit Price	Amount
1	1	221-3725	Dimension 4600 Series, Intel Pentium 4 Processor at 2.8GHz	EA	770.00	770.00
1	1	462-1656	512MB DDR SDRAM at 333MHz	EA	0.00	0.00
1	1	310-1582	Dell Quiet Key Keyboard	EA	0.00	0.00
1	1	462-8471	17 in (17 in viewable) E172FPB Flat Panel Display	EA	0.00	0.00
1	1	320-2870	Integrated Intel Extreme Graphics 2	EA	0.00	0.00
1	1	341-0834	80GB 7200 RPM Ultra ATA Hard Drive	EA	0.00	0.00
1	1	341-0217	USB Memory Key, 64MB	EA	0.00	0.00
1	1	340-8688	No Floppy Drive Requested	EA	0.00	0.00
1	1	313-7222	Dell Application Back-up CD, Factory Install	EA	0.00	0.00
1	1	420-1921	Microsoft Windows XP Home Edition, Service Pack 1, English	EA	0.00	0.00
1	1	412-0409	Generic Dimension Dell Support	EA	0.00	0.00
1	1	310-4037	Dell USB Optical Mouse	EA	0.00	0.00
1	1	430-0472	10/100/1000 Networking Card	EA	0.00	0.00
1	1	313-2279	56K PCI Data Fax Modem	EA	0.00	0.00
1	1	462-6817	48X Max CD-RW Drive	EA	0.00	0.00
1	1	313-0917	16X DVD-Rom Drive	EA	0.00	0.00
1	1	430-0594	Cyberlink Software Decoding for DVD Drives	EA	0.00	0.00
1	1	462-7810	Info, 16X DVD ROM and 48X CDRW	EA	0.00	0.00
1	1	313-1932	SoundBlaster Live! with 5.1 Support	EA	0.00	0.00
1	1	313-6010	Factory Installed Audio	EA	0.00	0.00
1	1	313-2201	AS500 Sound Bar Speaker with Power Adapter for E152, E172FP Flat Panel Display	EA	0.00	0.00
1	1	365-1234	Readyware Installation Fee	EA	0.00	0.00
1	1	410-0632	Symantec Norton AntiVirus 2004 CD With Documentation, Retail Version, Factory Installed	EA	0.00	0.00
1	1	412-0516	Dell Jukebox powered by Music Match	EA	0.00	0.00

PLEASE KEEP ORIGINAL BOX FOR ALL RETURNS. COMPREHENSIVE ONLINE CUSTOMER CARE INFORMATION AND ASSISTANCE IS A CLICK AWAY AT WWW.DELL.COM/PUBLIC-ECARE TO ANSWER A VARIETY OF QUESTIONS REGARDING YOUR DELL ORDER.

Ship. &/or Handling	\$	90.00
Subtotal	\$	860.00
Taxable:	Tax:	
\$ 860.00	\$	62.33
Invoice Total	\$	922.33
VISA	\$	922.33
	\$	
Balance	\$	0.00



This is your ACKNOWLEDGEMENT

Page 2 of 2

FID Number: 74-2616805
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Customer Number: 41742381
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 Payment Terms: VISA
 Shipped Via: LTL 5 DAY OR LESS
 Waybill Number: 6AT9894214207974

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SHIP TO:
 VIVIAN FIORI
 VIVIAN FIORI

PLEASE SEE IMPORTANT TERMS & CONDITIONS ON THE REVERSE SIDE OF THIS INVOICE

Order	Shipped	Item Number	Description	Unit	Unit Price	Amount
1	1	412-0521	Dell Photo Album Standard	EA	0.00	0.00
1	1	420-3224	Broadband Icon for Inspiron	EA	0.00	0.00
1	1	412-0625	Dell/My Way Home Page	EA	0.00	0.00
1	1	412-0590	AOL 9.0 EPP	EA	0.00	0.00
1	1	412-0360	Real Network RealOne Player Basic, Version 6, US English	EA	0.00	0.00
1	1	412-0395	Word Perfect Productivity Pack	EA	0.00	0.00
1	1	412-0551	Money 2004 Standard Version for Dimension	EA	0.00	0.00
1	1	412-0555	Microsoft Encyclopedia, 2004 for Dimension	EA	0.00	0.00
1	1	950-1260	*Type 3- Third Party At Home Service, 24x7 Technical Support, Initial Year	EA	0.00	0.00
1	1	950-3337	*1 Year Limited Warranty	EA	0.00	0.00
1	1	950-9797	*No Warranty, Year 2 and 3	EA	0.00	0.00
1	1	412-0360	Soft Contracts - BancTec	EA	0.00	0.00
1	1	420-4125	Turbo Tax 2003	EA	0.00	0.00
1	1	412-0519	Dell Media Experience	EA	0.00	0.00
1	1	462-1590	DHS Instant \$150 Off	EA	0.00	0.00
		System Service Tags	9WNRN41			

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is:

12100 Wilshire Boulevard, Suite 1900
Los Angeles, California 90025

On May 19, 2009, I served the forgoing document, described as:

FIRST AMENDED COMPLAINT FOR:

- 1. VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT, CALIFORNIA CIVIL CODE §§ 1790, *et seq.***
- 2. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, CALIFORNIA CIVIL CODE §§ 1750, *et seq.***
- 3. VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17500, *et seq.***
- 4. VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *et seq.***

on the interested parties in this action: ☒ ECF or ☐ by placing ☐ the original ☐ a true copy thereof to in an envelope addressed only as follows:

Sean P. DeBruine, Esq.
C. Augustine Rakow, Esq.
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